

**[Advisory Opinion 1992-3]**  
ADVISORY OPINION 1992-29

The Ethics Commission has reviewed your request for an advisory opinion dated April 23, 1992. The Commission understands that the facts forming the background to your requests are as follows:

The Board of Education has identified a vacant tract of land (Site) on which the Board proposes to build a new high school. The Site is currently zoned for residential use but the owner has applied for a zoning change to a mixed residential, commercial, and office use.

The Education Committee of the Council has recommended that the Council approve an appropriation of \$25,000 to allow the Board of Education to study the feasibility of building a high school on the Site. If the study indicates that building a high school on the Site is feasible, the Council may then be asked to decide whether to appropriate funds to acquire the Site and construct a high school on it.

You have indicated that you are a member of the County Council and that your personal residence, which you own, is approximately two blocks from the Site. You have further explained that your residence is separated from the Site by eight single-family homes and a six-lane divided highway. Finally, you have told the Commission that you do not know if construction of a high school on the Site will affect the value of your property.

You have asked the Commission if the Montgomery County Public Ethics Law allows you to participate in the discussions and vote on the appropriation of funds for: (1) the feasibility study; and (2) any subsequent decision to appropriate funds to acquire the Site and build a high school on it.

Section 19A-11(a) states:

“Unless permitted by a waiver, a public employee must not participate in:

- (1) any matter that affects, in a manner distinct from its effect on the public generally, any:
  - (A) property in which the public employee holds an economic interest;”<sup>1</sup>

The Commission believes that you may participate without conflict of interest in the decision to fund a feasibility study. The Commission notes that the purpose of the study is to obtain information which may or may not lead to subsequent Council action with regard to acquiring and building on the Site. Accordingly, the Ethics Commission

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<sup>1</sup> Unless otherwise indicated, section references are to the Montgomery County Code (1984).

finds that an information study will not affect, in a manner distinct from the public generally, your property.

The Commission believes, on the other hand, that Section 19A-11(a) prevents you from participating as a Councilmember in any matter that directly affects the Site, including a decision to appropriate funds to acquire the Site or build a high school on it. Since your residence is only two blocks from the Site, the Commission feels that a decision affecting development on the Site would impact the value of your property in a manner distinct from its effect on the public generally.

The Commission would be happy to review this conclusion if you provide the Commission with information that development of the Site would have no economic impact on your property. The Commission would find the professional opinion of a qualified appraiser especially significant in this regard.

In the alternative, if you conclude that your responsibility as an elected official requires your participation in this matter, you may request a waiver from the Commission. Under Section 19A-8, the Commission is authorized to grant a waiver from the prohibitions of Section 19A-11 if the Commission finds that:

- “(1) The best interest of the County would be served by granting the waiver;
- (2) The importance to the County of a public employee performing his or her official duties outweighs the actual or potential harm of any conflict of interest; and
- (3) Granting the waiver will not give a public employee an unfair advantage over other members of the public.”

Your request for a waiver should address each of these criteria.

If you have any questions regarding this advisory opinion, please contact the Commission.

Date of Issue: 6/3/92